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C O N F I D E N T I A L SECTION 01 OF 02 CANBERRA 000118

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COMMERCE PLEASE PASS TO NOAA NMFS MEDINA

E.O. 12958: DECL: 02/21/2020
TAGS: SENV EFIS PREL AS
SUBJECT: RUDD SAYS ZERO "COMMERCIAL" WHALING IN SOUTHERN
OCEAN BY NOVEMBER OR ELSE

REF: A. OPS-KAGAN CALL 2/19
1B. CANBERRA 92
1C. CANBERRA 55
1D. 2009 CANBERRA 1099

Classified By: Pol/Econ Counselor Edgard Kagan, Reasons 1.4(b)(d).

11. (C/NF) Summary: Australia will initiate legal action if Japan does not agree by November to end whaling in the Southern Ocean. PM Rudd announced February 19 that if negotiations do not result in a commitment by Japan to reduce the number of whales killed in the Southern Ocean by "commercial whaling" to zero by November, the Australian government will launch legal action against Japan at the International Court of Justice. The remarks are much stronger than previous statements and substantially raise the stakes for IWC negotiations on reducing whaling. The strong message on the eve of Japanese Foreign Minister Okada's February 20-21 visit to Australia does not appear to leave wiggle room for a compromise deal. Japanese Embassy contacts tell us they consider legal action inevitable. End Summary.

12. (C/NF) Responding to a question during a live interview on February 19, PM Rudd said: "In terms of dealing with the challenge of getting rid of commercial whaling in the Southern Ocean, and particularly in the Australian Whale Sanctuary, we oppose it. Specifically, what we're putting to the Japanese is to take where they are now, which is the slaughter of some hundreds of whales each year and reduce that to zero. If we don't get that as a diplomatic agreement, let me tell you, we'll be going to the International Court of Justice. If we don't reach a landing point with the Japanese diplomatically, that action will occur well before the start of the next whaling season, which is November." This constitutes a significant hardening of the previous GOA position that Australia would pursue a diplomatic track through IWC 62 in 2010 and then consider legal action if no diplomatic solution was reached. Australia had up to now been careful to leave some room to argue that an outcome that significantly reduced, but did not fully eliminate, whaling would meet their conditions.

13. (C/NF) Pol/Econ Counselor spoke February 19 with PM Rudd's Foreign Policy Advisor Scott Dewar to express unhappiness that that we had not received any advance notice despite

assurances as late as February 17 that there would be "no surprises" on whaling. Dewar sidestepped the question, saying his previous statements had been clear. FM Smith's Deputy Chief of Staff Andrew Dempster told us that Rudd's comments were a purposeful and deliberate statement of Australia's position. Dempster acknowledged that the statement would make Japanese FM Okada's visit "interesting." He also said that Australian IWC Commissioner Petrachenko has been trying to contact U.S. Commissioner Medina to brief her on this policy (this call may have happened but we were unable to reach Australian sources who could confirm it). Dempster said Australia would likely not attend the February 22 meetings in Tokyo and that more detail on the GOA's position would be shared in the run-up to that meeting. Phillip Qwould be shared in the run-up to that meeting. Phillip Green, Rudd's Senior Foreign Policy Advisor, told us later February 19 that the PM is deeply frustrated with Japan's unwillingness to make a serious offer on whaling that would adequately address Australia's concerns but is confident that any problems with Japan on whaling will not affect the rest of the bilateral relationship. He also committed to a detailed readout of the PM's discussions with Okada.

¶4. (C/NF) Pol/Econ Counselor spoke with Japanese DCM Masami Kinoshita on February 19. Kinoshita said Japan was surprised by Rudd's announcement and that he understood FM Okada would address Rudd's statement in his pre-departure press availability in Tokyo. Noting that Okada has surprised many within MOFA by his tough stance on whaling, Kinoshita said the Foreign Minister has made clear his growing annoyance with Australian complaints about whaling. FM Okada is very confident that Tokyo will win a legal challenge and has

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suggested internally that it would be good for Japan to show that its whaling program is on firm legal ground. Kinoshita said Okada will certainly raise whaling in his February 20 meeting with Rudd and his February 21 meeting with FM Smith. Kinoshita said the Japanese Ambassador's view is that legal action by Australia is inevitable.

¶5. (C/NF) Comment: Rudd is stating categorically that Australia is pursuing a "zero or bust" outcome for the Southern Ocean. It is not clear what remains for Australia to do in future negotiations, since any solution that reduces but fails to eliminate whaling appears to be unacceptable to the GOA. It also signals that the policy debate between zero tolerance on whaling and compromise with whaling countries has been settled in favor of taking a hard line in favor of conservation. In the context of a tough election year, this stance allows PM Rudd to claim he is fulfilling a long-standing campaign promise. End Comment.

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